

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE: PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESAL PRICE  
LITIGATION

MDL No. 1456

Master File No. 01-CV-12257-PBS

Judge Patti B. Saris

This Document Relates to  
ALL ACTIONS.

**AFFIDAVIT OF THOMAS M. SOBOL IN SUPPORT  
OF PLAINTIFFS' EMERGENCY MOTION TO RESET VARIOUS  
SCHEDULING DATES PERTAINING TO CLASS CERTIFICATION**

I, Thomas M. Sobol, depose and state under oath as follows:

1. I am attorney member of the Bar of the Supreme Judicial Court of the Commonwealth of Massachusetts. I am liaison and co-lead counsel in connection with the above-referenced matter.

2. Defendants' opposition materials to the Plaintiffs' Motion for Class Certification were due to be served on Plaintiffs on October 25, 2004. The materials were to include Defendants' opposition memorandum, any declarations in support thereof, and any materials relied upon by Defendants' experts.

3. On October 25, 2004, Defendants served a few of their opposition materials by the electronic Verilaw system, but the lion's share of their submission was served by means of a set of compact disks upon which electronic images of certain documents appeared. The CDs contained hundreds of electronic files.

4. In order to make the Defendants' submissions readable, and to be able to comprehend the organization of them, photocopies needed to be blown back from the CDs. That process took several business days. (Among other problems encountered, the files need to be correlated to exhibit order, etc.).

5. It appeared that Defendants' expert materials for to Mr. Young were incomplete. As a result, Defendants delivered hard copies of about 26 binders of materials relating to Mr. Young's declaration. Review of those binders took business days. Some of the documents were illegible, and as a result, requests were made to defendants to provide legible copies of the documents.

6. In short, as to Defendants' written submissions in opposition to the class motion, in effect, Plaintiffs were not provided with a complete, legible and organized copy of the materials for about a week after the due date.

7. More troubling, however, is the Defendants' failure to provide the electronic data heavily relied upon by two of Defendants' experts in connection with the class opposition. In their submissions, Defendants' experts Mr. Young and Mr. Gaier testify that in reaching their opinions they relied upon more than 20 sets of electronic data from: (i) non-party sources; (ii) a proprietary national database; and (iii) several of the Plaintiffs. They also testify that they relied upon manipulations made to that data in order to achieve the charts that they contend show certain features of drug reimbursement.

8. Since the time Plaintiffs were able to discover Defendants' omission in providing these electronic materials (a process which itself took many business days after getting the voluminous submission made by Defendants photocopied and organized), Plaintiffs have

attempted to have Defendants provide the electronic database reliance materials used by Defendants' experts.

9. Finally, two days ago on November 10, 2004, Defendants' agreed with Plaintiffs that they would provide these materials by today, Friday, November 12, 2004. Even with that provision, however, Defendants are unsure whether the proprietary database that one of their experts relied upon (the Medispan database) will be made available today or in the upcoming business days.

10. In short, Defendants' voluminous class opposition – an opposition that purports to be supported by the declarations of four different experts and about 40 large binders of materials, along with a score of databases most of which were only produced (or are being produced) today – has placed Plaintiffs' counsel in the position of having to move forward with expert depositions and drafting a reply without the information required to do so.

11. Accordingly, Plaintiffs' counsel has sought the modest extension of time set forth in the motion.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 12th DAY OF NOVEMBER, 2004.

By: /s/ Thomas M. Sobol  
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**CERTIFICATE OF SERVICE BY VERILAW**

Docket No. MDL 1456

I, Thomas M. Sobol, hereby certify that I am one of plaintiffs' attorneys and that, on November 12, 2004, I caused copies of Affidavit of Thomas M. Sobol in Support of Plaintiffs' Emergency Motion to Reset Various Scheduling Dates Pertaining to Class Certification to be served on all counsel of record by causing same to be posted electronically via Verilaw.

Dated: November 12, 2004

/s/ Thomas M. Sobol  
Thomas M. Sobol